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19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN FRANCISCO DIVISION

22 UNITED STATES OF AMERICA,

23 Plaintiff,

24 v.

25 RAHMAT ABDHIR et al

26 Defendants.

27 No. CR-07-00501-JF (HRL)

28 **[PROPOSED] PROTECTIVE
ORDER PURSUANT TO SECTION 4
OF THE CLASSIFIED
INFORMATION PROCEDURES
ACT AND RULE 16(d)(1) OF THE
FEDERAL RULES OF CRIMINAL
PROCEDURE**

29 SAN JOSE VENUE

30 This action is before the Court on the Government's First Classified *In Camera, Ex Parte* Motion
31 for a Protective Order Pursuant to Section 4 of the Classified Information Procedures Act, 18 U.S.C.
32 App. 3, and Rule 16(d)(1) of the Federal Rules of Criminal Procedure, supporting memorandum and
33 accompanying exhibits (hereinafter, the "Submission"), filed with the Court Security Officer or her
34 designee on November 9, 2007.

1 After *in camera*, *ex parte* inspection and consideration of the Submission, the Court finds,
2 pursuant to Section 4 of CIPA and Rule 16(d)(1), that the Government's Submission contains
3 classified information that requires protection against unauthorized disclosure for reasons of national
4 security. Specifically, the Court finds that disclosure of the Classified documents to the defense, or
5 to the public, reasonably could be expected to cause serious damage to national security.

6 The First Amendment right of access to court documents may be curtailed in favor of a
7 compelling governmental interest provided that the limitation on access if "narrowly tailored to serve
8 that interest." GlovB Newspaper Co. v. Superior Ct., 457 U.S. 596, 606-607, (1982); see also, Press-
9 Enterprise Co. v. Superior Ct., 464 U.S. 501, 510 (1984) ("The presumption of openness may be
10 overcome only by an overriding interest based on findings that closure is essential to preserve higher
11 values and is narrowly tailored to serve that interest."); Nixon v. Warner Communication Inc., 435
12 U.S. 589, 598 (1978) (common law right of access may be outweighed by an important competing
13 interest). The Court finds that the Government's interest in protecting the national security and
14 preventing the unnecessary dissemination of classified information outweighs the defendant's and/or
15 the public's right of access to these materials. See, Haig v. Agee, 453 U.S. 280, 307 (1981) ("[N]o
16 governmental interest is more compelling than the security of the Nation."); Snepp v. United States,
17 444 U.S. 507, 509 n.3 (1980) ("The Government has a compelling interest in protecting both the
18 secrecy of information important to our national security and the appearance of confidentiality so
19 essential to the effective operation of our foreign intelligence service.").

20 The Court further finds that the Government's Submission is so interrelated with classified
21 information, as to make impracticable the filing of meaningful redacted materials that do not divulge
22 classified information. No less reasonable alternative to closure and sealing will protect the
23 Government's interest in preventing the unauthorized dissemination of this information, and this
24 sealing order is drawn as narrowly as possible under the circumstances. The Government, in its
25 motion and Submission, seeks a protective order against disclosure of certain classified information
26 to the defense because that information is not discoverable under applicable law. Disclosure of the
27 motion or accompanying materials to the defense or the public would defeat the Government's
28 purpose in seeking a protective order.

1 Therefore, IT IS HEREBY ORDERED, that the Government's Submission may be filed *ex parte*
2 for *in camera* consideration and shall be sealed and maintained in a facility appropriate for the
3 storage of classified information at the identified level by the Court Security Officer as the designee
4 of the Clerk of the Court, in accordance with established security procedures, until further order of
5 this Court.

6 After *ex parte*, *in camera* inspection and consideration of the Submission,
7 IT IS HEREBY ORDERED THAT the Government's motion is GRANTED pursuant to Section
8 4 of CIPA and Rule 16(d)(1).

9 The Court finds that the classified information sought to be protected is either not discoverable
10 under Brady v. Maryland, 373 U.S. 1194 (1963), Giglio v. United States, 405 U.S. 150 (1972), and
11 their progeny, or Federal Rule of Criminal Procedure 16; or that such discovery value is outweighed
12 by the potential danger to national security that might ensue after disclosure.

13 IT IS HEREBY ORDERED that the Government need not disclose to the defense the classified
14 materials described in Parts V-VI of the Submission.

15 IT IS SO ORDERED, this 15th day of November, 2007.

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18 HONORABLE JEREMY FOGEL
19 UNITED STATES DISTRICT COURT
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